



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2003

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2003-8359

Dear Ms. Valkavich:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191322.

The City of San Antonio (the "city") received a request for five items of information regarding Bracewell & Patterson; Strasburger and Price, LLP; Wells, Pinkney & McHugh; and Business Property Tax Group for the annual periods from 1997 through 2003. The items requested are as follows: (1) all written application forms seeking to provide legal and/or professional services to the city, (2) all signed contracts, agreements and or commitments authorizing the professional services between the law firms and the city, (3) all city resolutions authorizing the professional services, (4) all insurance policies covering malpractice in conjunction with the legal and/or professional services provided by the firms to the city, and (5) the total financial obligation met by the city to the law firms and/or fiduciaries evidenced by billing records, invoices submitted for approval, canceled checks and resolutions authorizing payments. You note that you will release some of the responsive information, including portions of the billing information requested. You also explain that there is no information regarding Business Property Tax Group.¹ You claim that the "description-of-services" portions of the fee bills are excepted from disclosure under

¹ We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dis'd); Open Records Decision No. 452 at 3 (1986).

section 552.107 of the Government Code. We have reviewed the representative sample of information you submitted and considered the exception you claim.²

Initially, we note that in Open Records Letter No. 2003-7968 (2003), we ruled on Bracewell & Patterson's fee bills from the years 2000 through 2002 and ordered the release of these fee bills. To the extent the information responsive to the instant request is the same information previously ruled upon, the city may rely on our decision in Open Records Letter No. 2003-7968. Thus, assuming the four criteria for a previous determination as set forth in Open Records Decision No. 673 (2001) have been met, you must release such fee bills in accordance with that previous determination. *See* Open Records Decision No. 673 (2001) (criteria of previous determination regarding specific information previously ruled on). We will now address your arguments for the remainder of the submitted information that is not subject to the ruling in Open Records Letter No. 2003-7968 (2003).

Attorney fee bills are subject to section 552.022(a) of the Government Code, which provides, in pertinent part as follows:

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(16). Under section 552.022, fee bills must be released unless they are expressly confidential under other law. Section 552.107 of the Government Code, which excepts information that comes within the attorney-client privilege, is a discretionary exception under the Public Information Act. *See* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive section 552.107(1)). This exception does not constitute "other law" for purposes of section 552.022. However, the attorney-client privilege is also found in Rule 503 of the Texas Rules of Evidence. The Supreme Court has determined that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *see also* Open Records Decision Nos. 676 (2002), 677 (2002). Thus, we will determine whether the information is confidential under Rule 503 of the Texas Rules of Evidence.

² We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Texas Rule of Evidence 503(b)(1) provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

Tex. R. Evid. 503(b)(1). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body: (1) must show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) must identify the parties involved in the communication; and (3) must show the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* Open Records Decision No. 676 (2002). Upon a demonstration of all three factors, the information is privileged and confidential under Rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 4527 (Tex. App.—Houston [14th Dist.] 1998, no pet.) (privilege attaches to complete communication, including factual information).

You contend that the "description-of-services" in the submitted fee bills are privileged attorney-client communications. Having considered your representations as well as the

submitted information, we are able to identify only two privileged parties. Accordingly, only privileged communications with these individuals may be withheld pursuant to Rule 503. We have marked the information you may withhold pursuant to this rule. However, we have no basis for concluding that any other individual mentioned in the fee bills is a privileged party because the city has not identified them. Thus, entries reflecting communications with these individuals may not be withheld pursuant to Rule 503. *See* Open Records Decision No. 676 at 7 (2002) (“Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Absent such information, this office cannot necessarily assume that the communication was made only among the categories of individuals identified in rule 503, and the governmental body will thereby have failed to demonstrate the privilege.”); *see generally* Gov’t Code § 552.301(e)(1)(A); Open Records Decision No. 150 (1977) (stating that Public Information Act places burden on governmental body to establish why and how exception applies to requested information); *see also Strong v. State*, 773 S.W.2d 543, 552 (Tex. Crim. App. 1989) (burden of establishing attorney-client privilege is on party asserting it).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/sdk

Ref: ID# 191322

Enc. Submitted documents

c: Ms. Nancy Alanis
P.O. Box 15524
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(w/o enclosures)